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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/573,870

01/05/2007

Keith Richard Mitchelson

514572004500

7096

25225 7590 03/29/2010  
MORRISON & FOERSTER LLP  
12531 HIGH BLUFF DRIVE  
SUITE 100  
SAN DIEGO, CA 92130-2040

EXAMINER

COOLEY, CHARLES E

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

03/29/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/573,870	<b>Applicant(s)</b> MITCHELSON, KEITH RICHARD	
	<b>Examiner</b> Charles E. Cooley	<b>Art Unit</b> 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 March 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20090128; 20060526</u> .                                      | 6) <input type="checkbox"/> Other: _____                          |

## **NON-FINAL OFFICE ACTION**

1. **This application has been assigned to Technology Center 1700, Art Unit 1797 and the following will apply for this application:**

Please direct all written correspondence with the correct application serial number for this application to **Art Unit 1797**.

Telephone inquiries regarding this application should be directed to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197 or to the Examiner at (571) 272-1139. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

### ***Priority***

2. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). All of the CERTIFIED copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

### ***Information Disclosure Statement***

3. Note the attached PTO-1449 forms submitted with the Information Disclosure Statements filed 28 JAN 2009 and 26 MAY 2006.

### ***Drawings***

4. The drawings are objected to under 37 CFR § 1.83(a) since the drawings must show every feature of the invention specified in the claims. Therefore, the following

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features must be shown or the features canceled from the claims. No new matter should be entered.

- a. the pump (at least claim 3).
  - b. the subject matter of claims 8 and 22.
  - c. the subject matter of claims 9 and 23.
  - d. the subject matter of claim 10.
  - e. the subject matter of claim 11.
5. The drawings are objected to because of the following informalities:
  - a. the different views (such as Figures 1-5) are not numbered separately in consecutive Arabic numerals in the order in which they appear on the drawing sheets (37 CFR 1.84(u)). Each of Figures 1-5 is deemed to include four distinct Figures that are not labeled separately.
  - b. the numbers, letters, and reference characters are not 1/8 inch in height (37 CFR 1.84(p)(3)). The reference numerals are too small and the small text is barely legible.
  - c. the drawings contain improper sectional views. The plane upon which a sectional view is taken should be indicated on the view from which the section is cut by a broken line. The ends of the broken line should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view, and should have arrows to indicate the direction of sight (37 CFR 1.84(h)(3)). Correction is required.

For example, Figures 1 and 4 show section A-A and section B-B? (illegible) and the other Figures show section A-A which is improper. All sectional views should be corrected in accordance with 37 CFR 1.84(h)(3).

**Applicant should also ensure a proper one-to-one correspondence between the specification and drawings in accordance with MPEP 608.01(g) and 37 CFR 1.84(f). The brief description of the drawings and the descriptive portion of the specification require revision in accordance with the above drawing objections.**

Correction is required.

6. Applicant should verify that (1) all reference characters in the drawings are described in the detailed description portion of the specification and (2) all reference characters mentioned in the specification are included in the appropriate drawing Figure(s) as required by 37 CFR 1.84(p)(5).

### **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

#### **Replacement Drawing Sheets**

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" (37 CFR 1.121(d)) and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not

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been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

### **Annotated Drawing Sheets**

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheets must be clearly labeled as "Annotated Marked-up Drawings" and accompany the replacement sheets.

### **Timing of Corrections**

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

### ***Specification***

7. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

8. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required. The PCT abstract is not considered an abstract on a separate sheet for IFW purposes.

9. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed (MPEP 606.01). The title should mention the movable collection assembly recited in the claims.

***Claim Rejections - 35 U.S.C. § 112, second paragraph***

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 1-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The second paragraph of 35 U.S.C. § 112 requires a claim to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Under *In re Hammack*, 427 F.2d 1378, 166 USPQ 204 (CCPA 1970) and *In re Moore*, 169 USPQ 236 (CCPA 1971), claims must be analyzed to determine their metes and bounds so that it is clear from the claim language what subject matter the claims encompass. This analysis must be performed in light of the applicable prior art and the disclosure. The definiteness of the claims is important to allow others who wish to enter the market place to ascertain the boundaries of protection that are provided by the claims. *Ex parte Kristensen*, 10 USPQ 2d 1701, 1703 (BPAI 1989).

One of the purposes of 35 U.S.C. § 112, second paragraph, “is to provide those who would endeavor, in future enterprise, to approach the area circumscribed by the claims of a patent, with adequate notice demanded by due process of law, so that they may more readily and accurately determine the boundaries of protection involved and evaluate the possibility of infringement and dominance.” *In re Hammack*, supra. As set

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forth in *Amgen Inc. v. Chugai Pharmaceutical Co., Ltd.*, 927 F.2d 1200, 1217, 18

USPQ2d 1016, 1030 (Fed. Cir. 1991).

The statute requires that "[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention." A decision as to whether a claim is invalid under this provision requires a determination whether those skilled in the art would understand what is claimed. See *Shatterproof Glass Corp. v. Libbey-Owens Ford Co.*, 758 F.2d 613, 624, 225 USPQ 634, 641 (Fed. Cir. 1985) (claims must "reasonably apprise those skilled in the art" as to their scope and be "as precise as the subject matter permits.").

12. The pending claims fail to particularly point out and distinctly claim the subject matter which applicant regards as the invention and are therefore of indeterminate scope for the following reasons:

The claims are replete with terms that lack consistent terminology and that lack antecedent basis.

For example, in claim 1, "the annular columns" lacks antecedent basis and conflicts with the previously recited "annular rings"; in claim 9, "the container" lacks antecedent basis; in claim 10, "the collecting conduit" lacks antecedent basis; in claim 25, "the means of detection" lacks antecedent basis.

The above deficiencies are merely exemplary and claims 1-28 should each be reviewed and revised using the noted defects as a guide for correction.

13. Each pending claim should be thoroughly reviewed such that these and any other informalities are corrected so the claims may particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.



***Claim Rejections - 35 USC § 102***

14. The terms used in this respect are given their broadest reasonable interpretation in their ordinary usage in context as they would be understood by one of ordinary skill in the art, in light of the written description in the specification, including the drawings, without reading into the claim any disclosed limitation or particular embodiment. See, e.g., *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000); *In re Morris*, 127 F.3d 1048, 1054-55 (Fed. Cir. 1997); *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989).

The Examiner interprets claims as broadly as reasonable in view of the specification, but does not read limitations from the specification into a claim. *Elekta Instr. S.A.v.O.U.R. Sci. Int'l, Inc.*, 214 F.3d 1302, 1307 (Fed. Cir. 2000). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**16. Claims 1-2, 5-7, and 12-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Funabashi et al. (US 4,543,085).**

The patent to Funabashi et al. discloses a separating apparatus in Fig. 3 as depicted below and a method including a circular bowl 102 and/or 214 rotatable about a

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central axis and having an opening within 115 and 215 through which the mixture is introduced into the bowl, whereby the rotation of the bowl separates the mixture to form annular rings of the discrete density phases, and a collection assembly 5 and/or 19 for removing the separated discrete density phases, wherein the collection assembly is movable with respect to the bowl via drive 6 or drive 20 such that the collection assembly can be positioned in the bowl to sequentially selectively and individually remove the annular columns from the bowl while the bowl is rotating substantially without disturbing the remaining annular columns within the bowl; wherein the collection assembly is positioned proximal to a surface of the annular column closest to the central axis during removal of the annular column; wherein the collection conduit 5 or 19 is arranged such that the end of the collection conduit extends substantially perpendicular to the central axis of the bowl (Fig. 3); wherein the mixture is introduced into the bowl by means of a delivery conduit 7 inserted into the bowl through the opening of the bowl; wherein a cleaning conduit 13 is inserted into the bowl through the opening to introduce a cleaning solution to the bowl after the separated multiphase mixture is removed from the bowl; the method disclosed at col. 3, line 33 - col. 4, line 25.

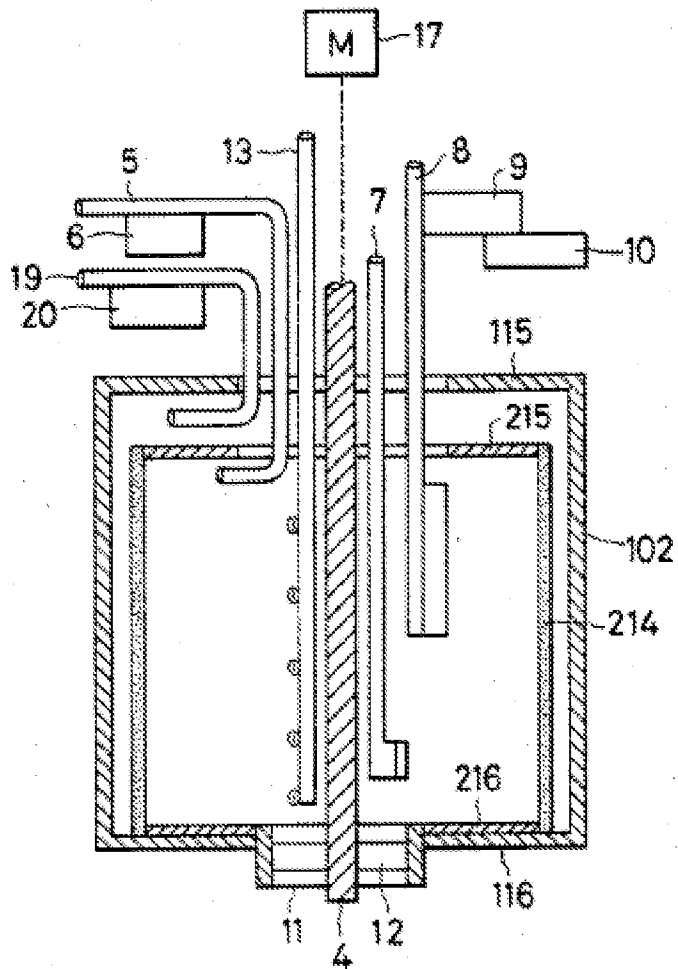
With regard to apparatus claims 12-14, “[e]xpressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim.” *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). Furthermore, “[i]nclusion of material or article worked upon by a structure being claimed does not impart patentability to the claims.” *In re Young*, 75 F.2d 966, 25 USPQ 69 (CCPA 1935) (as restated in *In re Otto*, 312 F.2d 937, 136 USPQ 458, 459 (CCPA

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1963)). Accordingly, the recited "materials being separated are merely the contents of the apparatus during an intended operation and are thus of no patentable significance in the pending apparatus claims.

Although this patent is considered to explicitly or inherently meet the operational limitations of apparatus claim 2, the manner in which the recited separator is operated is noted, however, as held in *In re Casey*, supra 370 F.2d 576, 152 USPQ 235 (CCPA 1967), "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself."

**FIG. 3**



**17. Claims 1-6, 8-19, and 21-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Kirkpatrick (US 3,570,754).**

The patent to Kirkpatrick discloses a separating apparatus as depicted below and a method including a circular bowl 22 rotatable about a central axis and having an opening (proximate 40) through which the mixture is introduced into the bowl, whereby the rotation of the bowl separates the mixture to form annular rings of the discrete density phases, and a collection assembly 50 for removing the separated discrete density phases, wherein the collection assembly is movable with respect to the bowl via drive 56 such that the collection assembly can be positioned in the bowl to sequentially selectively and individually remove the annular columns from the bowl while the bowl is rotating substantially without disturbing the remaining annular columns within the bowl; wherein the collection assembly is positioned proximal to a surface of the annular column closest to the central axis during removal of the annular column; wherein the collection assembly has a collection conduit 52 for collecting at least one annular column inserted into the bowl through the opening and a pump 72; wherein the flow rate of the collection of the annular column from the surface of the annular column is at least the flow rate at which an equivalent volume within the annular column is presented for collection; wherein the collection conduit 52 is arranged such that the end of the collection conduit extends substantially perpendicular to the central axis of the bowl (Fig. 1); wherein the mixture is introduced into the bowl by means of a delivery conduit 38 inserted into the bowl through the opening of the bowl; wherein the introduction of the multiphase mixture into the bowl is by introduction of introducing the separate

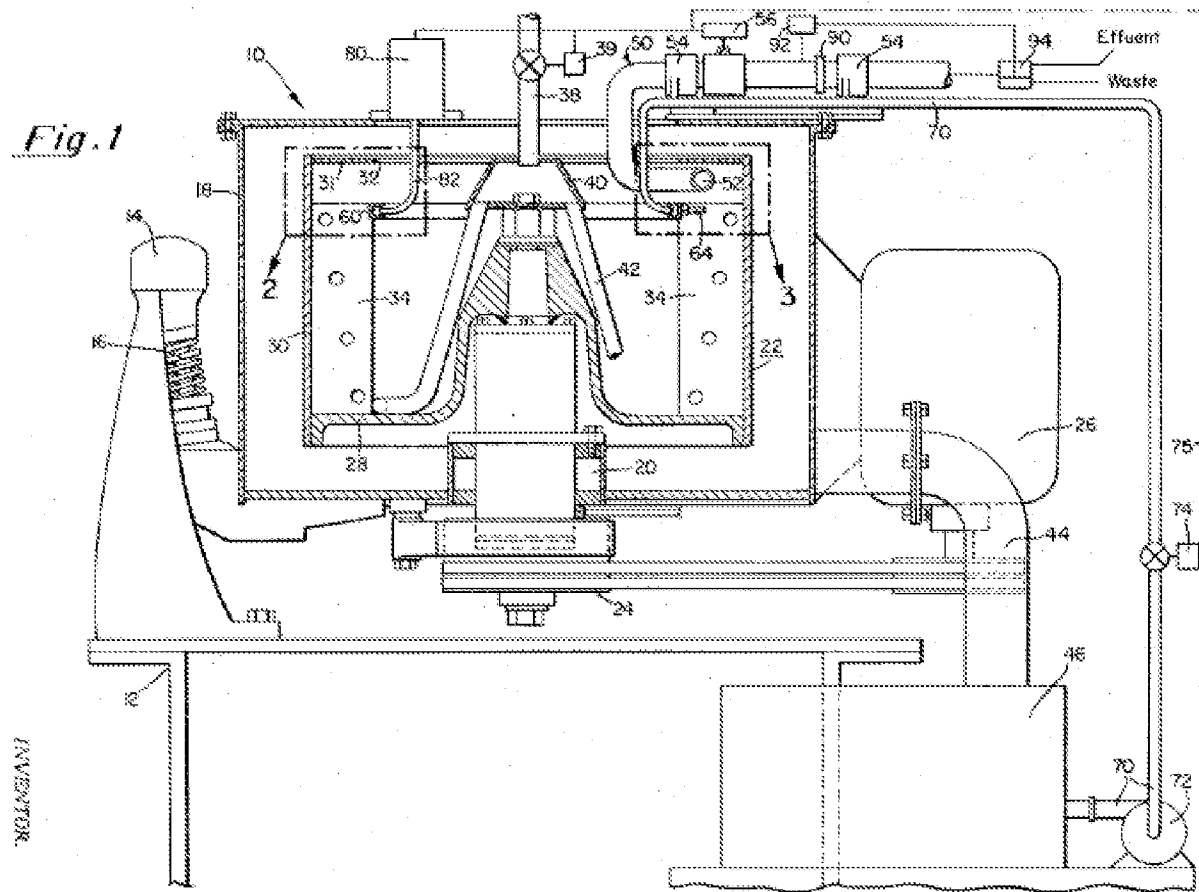
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components of the mixture separately into the bowl, and the bowl includes a means 34 for agitating and mixing the separate components in the bowl to form a mixture; wherein the means for agitating and mixing the mixture is baffles 34 positioned in the container (Fig. 1); wherein the collecting assembly further includes a waste collecting conduit (proximate 94 in Fig. 1) and a means 60, 80 for identifying the discrete density media or boundary layers formed thereby, and a means 56 to control the movement of the collection assembly such that the movement of the removal means is controllable to allow for the sequential removal from the bowl of each discrete density media by either the collecting conduit or waste collecting conduit; wherein the means for identifying the discrete density media is selected from optical, spectral, electrical conductivity or rheostatic analysis of the discrete density media; the method disclosed at col. 3, line 61 - col. 5, line 29. A multiphase mixture is explicitly taught at col. 5, lines 1-29.

Although this patent is considered to explicitly or inherently meet the operational limitations of apparatus claims 2, 4, and 8, the manner in which the recited separator is operated is noted, however, as held in *In re Casey*, supra, "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself."

With regard to apparatus claims 12-14, the recited "materials being separated are merely the contents of the apparatus during an intended operation and are thus of no patentable significance in the pending apparatus claims as explained above.

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**18. Claims 1-6, 10-19, 21, 24, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Buttner et al. (US 5,090,953).**

The patent to Buttner et al. discloses a separating apparatus as depicted below and a method including a circular bowl 11 rotatable about a central axis and having an opening (proximate 10) through which the mixture is introduced into the bowl, whereby the rotation of the bowl separates the mixture to form annular rings 20 and 40 of the discrete density phases, and a collection assembly 54 for removing the separated discrete density phases, wherein the collection assembly is movable with respect to the bowl via drive 55 such that the collection assembly can be positioned in the bowl to sequentially selectively and individually remove the annular columns from the bowl while the bowl is rotating substantially without disturbing the remaining annular columns within the bowl; wherein the collection assembly is positioned proximal to a surface of the annular column closest to the central axis during removal of the annular column (Fig. 1); wherein the collection assembly has a collection conduit 50 for collecting at least one annular column inserted into the bowl through the opening and a pump 59; wherein the flow rate of the collection of the annular column from the surface of the annular column is at least the flow rate at which an equivalent volume within the annular column is presented for collection; wherein the collection conduit 50 is arranged such that the end of the collection conduit extends substantially perpendicular to the central axis of the bowl (Fig. 1); wherein the mixture is introduced into the bowl by means of a delivery conduit 10 inserted into the bowl through the opening of the bowl; wherein the introduction of the multiphase mixture into the bowl is by introduction of introducing the



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separate components of the mixture separately into the bowl, wherein the collecting assembly includes a collecting conduit 54 capable of discharging waste material and a means 60 for identifying the discrete density media or boundary layers formed thereby, and a means 55 to control the movement of the collection assembly such that the movement of the removal means is controllable to allow for the sequential removal from the bowl of each discrete density media by either the collecting conduit or waste collecting conduit; wherein the means for identifying the discrete density media is selected from optical, spectral, electrical conductivity or rheostatic analysis of the discrete density media (see col. 4, lines 40-42 that references cited US Patent No. 4,900,453 with this '453 patent teaching the sensor in the form of an electrical conductivity sensor at col. 2, lines 40-41); the method disclosed at col. 4, line 34 - co.. 5, line 30

Although this patent is considered to explicitly or inherently meet the operational limitations of apparatus claims 2 and 4, the manner in which the recited separator is operated is noted, however, as held in *In re Casey*, supra, "the manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself."

With regard to apparatus claims 12-14, the recited "materials being separated are merely the contents of the apparatus during an intended operation and are thus of no patentable significance in the pending apparatus claims as explained above

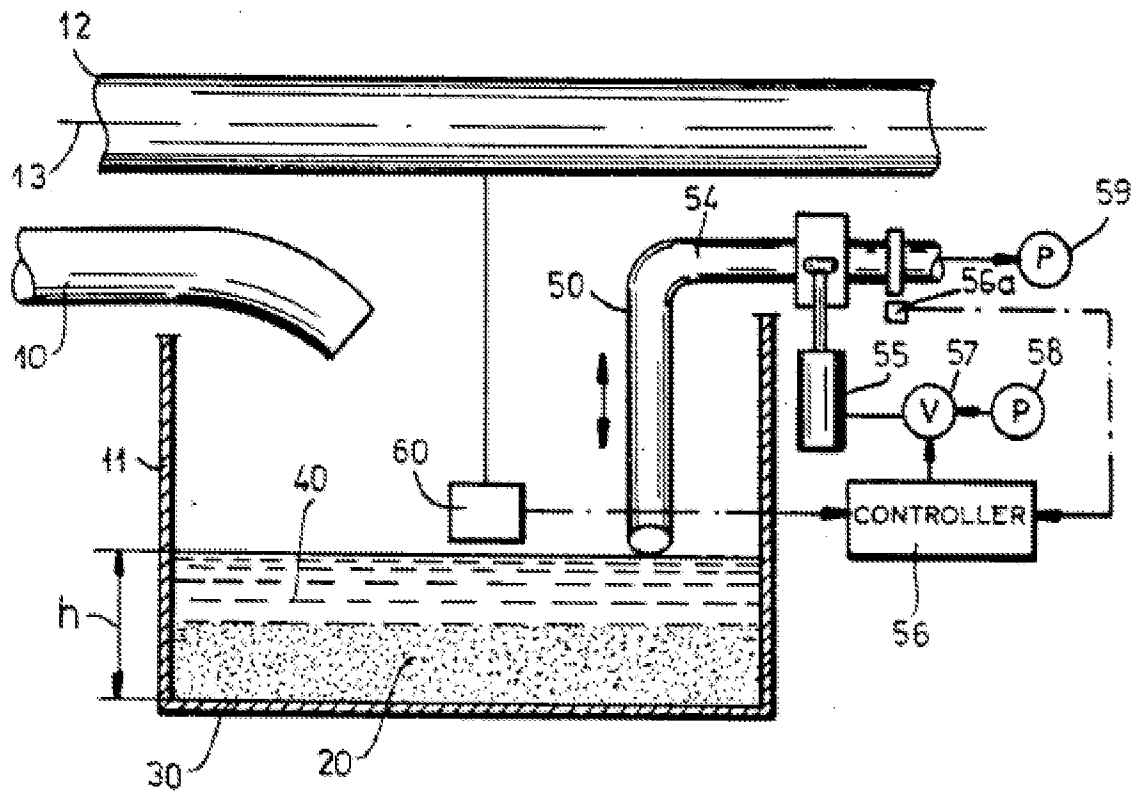


FIG.1

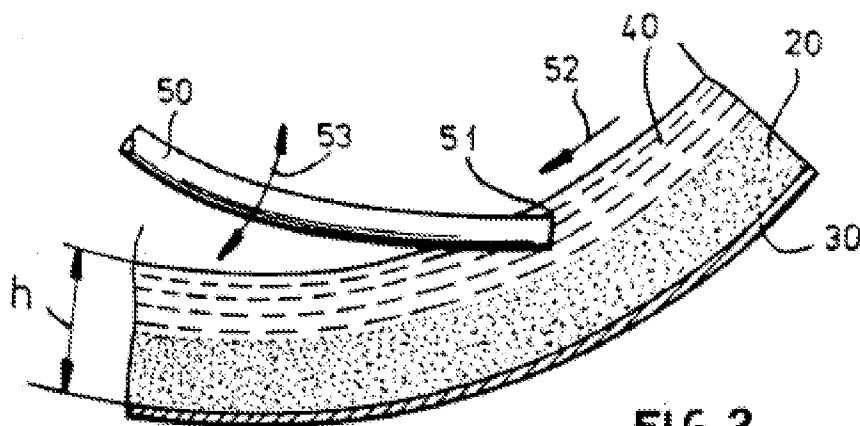


FIG. 2

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19. Claims 1-28 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wheelock (US 3,428,249) per the European Search Report of 2 DEC 2008, of record.

X ✓	US 3 428 249 A (WHEELOCK DAVID BENT ET AL) 18 February 1969 (1969-02-18) * the whole document *	1-28
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20. Claims 1-28 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Atherton et al. (US 3,243,106) per the European Search Report of 2 DEC 2008, of record.

X ✓	US 3 243 106 A (EDWARD ATHERTON ET AL) 29 March 1966 (1966-03-29) * column 4, line 11 - column 6, line 14; claims; figures *	1-28
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21. Claims 1-28 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Millar (US 2,154,134) per the European Search Report of 2 DEC 2008, of record.

X ✓	US 2 154 134 A (HILL MILLAR JAMES) 11 April 1939 (1939-04-11) * the whole document *	1-28
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**22. Claims 1-28 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Spinell (US 4,591,445) per the European Search Report of 2 DEC 2008, of record.**

X ✓	US 4 591 445 A (SPINELL MAX [DK] ET AL) 27 May 1986 (1986-05-27) * column 1, line 5 - column 2, line 68 * * column 5, line 29 - column 9, line 39 * * figures *	1-28
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***Claim Rejections - 35 USC § 103***

23. To determine whether subject matter would have been obvious, "the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved .... Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented."

*Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966).

The Supreme Court has noted:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.

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*KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1740-41 (2007). "Under the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed." (Id. at 1742).

24. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**25. Claims 26-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Funabashi et al. (US 4,543,085), Kirkpatrick (US 3,570,754), or Buttner et al. (US 5,090,953) in view of Beritashvili et al. (US 5,610,074).**

Funabashi et al. (US 4,543,085), Kirkpatrick (US 3,570,754), or Buttner et al. (US 5,090,953) do not disclose the recited materials being separated in method claims 26-28. The patent to Beritashvili et al. discloses a separating apparatus and method that employs the recited nucleic acids and/or cellular material therein. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have employed the substances recited in claims 26-28 in the methods of Funabashi et al. (US 4,543,085), Kirkpatrick (US 3,570,754), or Buttner et al. (US 5,090,953) for the purposes of isolating nucleic materials from a sample liquid (col. 1, lines 26-50 and col. 2, lines 44-53).

***Allowable Subject Matter***

26. No claims stand allowed.

***Conclusion***

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

28. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley in Art Unit 1797 whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri.. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Charles E. Cooley/

Charles E. Cooley  
Primary Examiner  
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